

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNIVERSAL CITY STUDIOS, INC.,)

Plaintiff,)

vs.)

NINTENDO CO., LTD., and)
NINTENDO OF AMERICA, INC.,)

Defendants.)

No. 82 CIV4259 (RWS)

Deposition Upon Oral Examination Of

MINORU ARAKAWA

Taken at 1700 Peoples Bank Building; Seattle, Washington.

APPEARANCES:

For the Plaintiff:

DOUGLAS C. FAIRHURST
Townley & Updike
405 Lexington Avenue
New York, New York 10017

For the Defendants:

JAMES L. MAGEE
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JOHN J. KIRBY, JR.
Mudge, Rose, Guthrie
& Alexander
20 Broad Street
New York, New York 10005

DATE: August 30, 1982

REPORTED BY: SHEILA M. MECARTEA, CSR

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1 Q Yes. Has anyone in your organization looked through the
2 files to determine whether there was such a Telex?

3 A No.

4 MR. MAGEE: Let me say, so the record will
5 be clear on this, on the request for production of
6 documents, a complete and full effort was made by
7 the proper people to seek out any documents that were
8 covered by the request for production of documents.
9 I don't have that before me, but if it was within that
10 request, a search would have been made for it. Is
11 that clear?

12 MR. FAIRHURST: Yes, surely.

13 Q Mr. Arakawa, you weren't asked personally to go through
14 your record in conjunction with that lawsuit, were you?

15 A No.

16 Q When you received notice that this game would be called
17 Donkey Kong, did you discuss that name with anyone in
18 your organization?

19 A Yes.

20 Q With whom?

21 A With either Mr. Judy or Mr. Stone or both.

22 Q Can you put a time period for us?

23 A Soon after we found the new game is called Donkey Kong.

24 Q Do you recall the substance of your conversations or
25 discussions with Mr. Judy or Mr. Stone with respect to

1 the new game?

2 A They didn't like it.

3 Q They didn't like it. Do you remember what they said to
4 you?

5 A It's funny name.

6 Q What was your view on it, or did you have a view?

7 A I don't know why it's funny, but because they say it's
8 funny, it must be funny.

9 Q Did you ask them why they thought it was a funny name?

10 A I discussed it, but the impression I have is just funny.

11 Q That's all they said, "This is a funny name," and that
12 was the end of the discussion?

13 A Yes.

14 Q Did you discuss with them any alternative names for
15 the game?

16 A No.

17 Q Did they offer any alternative names for the game?

18 A No.

19 Q Do you remember where the discussion took place?

20 A No; I don't remember.

21 Q Did you have just one discussion with Mr. Stone and
22 Mr. Judy on this subject, or was there more than one
23 discussion?

24 A I don't remember.

25 Q It's conceivable you had additional discussions?

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1 A I don't remember.

2 Q Did you prepare or write any memoranda on this subject?

3 A No.

4 Q To your knowledge, did Mr. Judy or Mr. Stone prepare or
5 write any memoranda on the subject?

6 A No.

7 Q To your knowledge, did anyone in your organization
8 write or prepare any memoranda on this subject?

9 A No.

10 Q Did you have any further discussions with anyone in
11 the Japanese company with respect to the name, Donkey
12 Kong, after being first told what the name was going
13 to be?

14 MR. MAGEE: What was the question again?

15 Q Did you have any discussions with anyone in the Japanese
16 company after first being told what the name was,
17 further discussions on the subject?

18 A Yes. Both Mr. Judy and Mr. Stone said, "It's funny,"
19 and when they contacted distributors and told them the
20 new game will be called Donkey Kong, most of the
21 distributors make joke of it, and Mr. Stone and
22 Mr. Judy didn't like it, so they asked me if I can
23 ask Japan to change the name.

24 I did it over the Telex, and the answer was,
25 "It's very difficult to change it."

1 Q I take it from your answer, Mr. Arakawa, that Mr. Stone
2 and Mr. Judy reported back to you their conversations
3 with distributors?

4 A Yes.

5 Q Do you recall any specific statements that they gave
6 you, that is, Mr. Stone and Mr. Judy, with respect to
7 what the distributors said?

8 A When they said, "What's the new game," they said,
9 "It's called Donkey Kong," and in most cases the
10 distributor couldn't catch it. They said "Donkey Dong,"
11 and I remember they were repeatedly repeating the name
12 Donkey Kong, and most of them just made a joke of it,
13 and they asked me to ask Nintendo Company, Limited,
14 if they can change it.

15 Q Did they put that request to you, Mr. Stone and Mr. Judy,
16 in writing?

17 A No.

18 Q Did you personally have any discussions with
19 distributors about the name?

20 A I think so.

21 Q Do you recall which distributor or distributors?

22 A I don't remember.

23 Q Did any of the distributors write to Nintendo of America,
24 Inc., with respect to the name?

25 A What?

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1 Q Did any of the distributors write you letters or
2 send you letters, send Nintendo of America, Inc.,
3 letters or memos referring to the name and saying what
4 they thought of it?

5 A No; but sometimes, I believe, when they place an
6 order, I believe they put Donkey Dong instead of
7 Donkey Kong.

8 Q Does Nintendo of America receive letters and correspondence
9 from players of Donkey Kong from time to time?

10 A Yes.

11 Q Does the company retain those in its files?

12 A I think so.

13 Q Did you read those letters?

14 A I read it.

15 Q You said "it." You read --

16 A I read them.

17 Q You read them?

18 A I read.

19 Q You have read them.

20 A Yes.

21 Q Do you read all of them just as a matter of course?

22 A I believe I read most of them.

23 Q They are retained in the files of Nintendo of America,
24 Inc., at this point, to your knowledge?

25 A I think so.

(By Mr. Fairhurst)

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1 Q To your knowledge, Mr. Arakawa, do any of those letters
2 refer to King Kong?

3 A Not that I know of.

4 Q How large a file would you have on this subject, of
5 correspondence from people who played; do you know?

6 A No, I don't.

7 Q Who is in charge of that file?

8 A Probably Susan Schoenecker knows where they are.

9 Q What's her title?

10 A She's customer service.

11 Q What does she do?

12 A She does licensing. She does secretary work. She
13 summarizes the orders. She writes correspondence to
14 the letters we received.

15 Q Does she answer letters from players of the game?

16 A Yes.

17 Q She's employed here in Seattle?

18 A Yes.

19 (Discussion held off the record.)

20 MR. FAIRHURST: We would request at this
21 time that the file or files of queries and correspondence
22 by players and distributors of the game, to which the
23 witness has referred in his testimony, be produced for
24 our inspection.

25 MR. KIRBY: Let's get that again so it's

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1 thing. The entire document is not referred to. There
2 are matters that have nothing to do with this. Suit
3 yourself.

4 MR. FAIRHURST: There's no way I can
5 determine that by looking at it, regrettably, since
6 I do not read Japanese.

7 MR. MAGEE: Why doesn't he tell you what the
8 contents of it are in general.

9 Q I think it's the last two paragraphs, but if there's
10 more to it that refers to Donkey Kong, don't let that
11 limit you.

12 A Okay. This is the Telex dated July 2nd, 1981, from
13 myself to Mr. Todori in Nintendo Company, Limited, and
14 item six says, "We did the preliminary search, trademark
15 search, of Sky Skipper and Donkey Kong, and we received
16 the favorable answer from the lawyer. It takes another
17 week until we receive our written report. We want to
18 know if Nintendo Company, Limited, are going to register
19 the same in trademark and copyright. Is it possible
20 for us to change the names only in the United States?"

21 Q At some subsequent time was there a report sent to
22 Nintendo of America, Inc., on a trademark search in the
23 U.S.?

24 A Pardon?

25 Q Was a report received by Nintendo of America, Inc.,

1 reporting on a trademark search to which the Telex
2 refers?

3 A Yes.

4 Q Who prepared that report, if you know?

5 A It's Mr. Larry Jackson of Christensen.

6 MR. MAGEE: It's the Christensen law firm
7 here in Seattle.

8 MR. FAIRHURST: We would request a copy of that
9 report as well.

10 Q Mr. Arakawa, did you receive a response to your Telex
11 on the Donkey Kong matter?

12 A I received it.

13 Q You received a response?

14 A Yes.

15 Q What did the response say?

16 A I remember it is very difficult to change the name
17 at this time.

18 MR. FAIRHURST: We would request a copy of
19 that response.

20 Q Was that in writing, I assume?

21 A I try to find it, but I couldn't, so I believe it
22 was over the phone.

23 Q If it was over the phone, do you have an idea as to
24 who it was that was giving you the response?

25 A I believe it was Mr. Todor.

1 A All right.

2 Q An English expression, American or English, brought
3 into the Japanese language or adopted; is that what
4 you're saying?

5 A I think so.

6 Q Do you agree, Mr. Arakawa, that Donkey Kong is
7 confusingly similar to King Kong?

8 A I don't think so.

9 Q You don't agree with that?

10 A I don't agree.

11 Q Are you aware of having given an affidavit that was
12 submitted to the United States Patent and Trademark
13 Office March 11, 1982?

14 A Can I see it?

15 (Exhibit No. 3 was marked
16 for identification.)

17 Q Let me put before you, Mr. Arakawa, what's been marked
18 as plaintiff's Exhibit No. 3, which is an affidavit
19 bearing your signature, submitted to the United States
20 Patent and Trademark Office in March 1982, and I
21 specifically refer you to paragraph five of that
22 affidavit.

23 A Yes.

24 Q Does that correctly reflect what you said in that
25 affidavit?

MR. MAGEE: Does what?

Q Does the statement that he just read, paragraph five, correctly reflect your views?

A Yes.

Q So you did at one time say that Donkey Kong was confusingly similar to King Kong, did you not?

MR. MAGEE: I object to the form of the question on the grounds that it incorrectly characterizes what was said in that affidavit.

Q I'll read it for the record. It says that applicant, meaning signatory, Mr. Arakawa, is aware of at least ten other specific reports of infringement of its audio-visual game sold under the trademark DONKEY KONG, which infringing games use either an identical or a confusingly similar name, including the above-mentioned CRAZY KONG, and such variations thereof as KING KONG and DONKEY KING.

A I understand.

MR. KIRBY: I don't think there's any question.

MR. MAGEE: There's no question before the witness, Mr. Arakawa.

Q Mr. Arakawa, are you familiar with a company called Dentsu Corporation?

A Yes.